No. 14-1132

In the Supreme Court of the United States

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., ET AL.,
PETITIONERS,

v.

GREG MANNING, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF FOR THE SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION AS AMICUS CURIAE SUPPORTING PETITIONERS

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

Pursuant to Rule 37.2(b) of the Rules of this Court, the Securities Industry and Financial Markets Association (SIFMA) hereby respectfully moves for leave to file the accompanying brief as amicus curiae supporting petitioners in this case. SIFMA provided timely notice to the parties of its intent to file this brief. Petitioners have consented to filing; respondents' counsel has not responded to multiple inquiries.

The decision below deepens an existing circuit split regarding the meaning of Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. 78aa, which grants exclusive jurisdiction to federal courts over suits involving violations of the Exchange Act. Many of SIFMA's members are financial institutions subject to that Act, and they understand firsthand the need for clarity and uniformity in the application of the federal securities laws. As both regulated entities and litigants in this area, SIFMA's members are familiar with how the decision below will affect a significant sector of the financial industry and the U.S. securities market.

SIFMA respectfully submits that its views on the importance of this case shed additional light on the issues presented here and the need for this Court's review. In light of those views and its substantial interest in the resolution of this case, SIFMA requests that it be granted leave to participate as an amicus curiae by filing the accompanying brief in support of petitioners.

Respectfully submitted.

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BRIEF FOR THE SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION AS AMICUS CURIAE SUPPORTING PETITIONERS

INTEREST OF AMICUS CURIAE

SIFMA brings together the shared interests of more than 650 securities firms, banks, and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation, and economic growth, while building trust and confidence in the financial markets. With offices in New York and Washington, D.C., SIFMA is the U.S. regional member of the Global Financial Markets Association.[1]

SIFMA has a unique perspective on this case. Many of SIFMA's members are financial institutions subject to the Securities Exchange Act of 1934, 48 Stat. 881, 15 U.S.C. 78a *et seq.* This case concerns the interpretation of Section 27 of that Act, which grants exclusive jurisdiction to federal courts over Exchange Act violations. As both regulated entities and litigants in this area, SIFMA's members have a substantial interest in the meaning and scope of that provision. The decision below deepens an existing circuit split over the proper interpretation of Section

[1] Pursuant to Rule 37.6, SIFMA affirms that no counsel for a party authored this brief in whole or in part, and that no person other than amicus or its counsel contributed any money to fund its preparation or submission. SIFMA provided timely notice to the parties of its intent to file this brief. Petitioners have consented, but respondents' counsel has not responded to multiple inquiries. SIFMA therefore has filed a motion for leave to file this brief.

27, which has resulted in extensive litigation regarding the threshold question of where suits like this one should be brought. Accordingly, SIFMA has a significant interest in the Court's resolution of this case.

SUMMARY OF ARGUMENT

I. A. The courts of appeals are divided over the proper interpretation of Section 27. The Fifth and Ninth Circuits have held that Section 27 confers original jurisdiction over claims predicated on Exchange Act violations; the Second and now the Third Circuit have held that it does not. The difference is dispositive in a case like this one, because respondents have premised their state-law claims on violations of the Exchange Act and its implementing regulations. In other circuits, respondents' choice would invoke federal jurisdiction under Section 27. The resolution of that circuit conflict also stands to affect two other statutory regimes with similarly worded exclusive-jurisdiction provisions, the Natural Gas Act and the Federal Power Act, which likewise have given rise to conflicting decisions in the courts of appeals.

B. The question of Section 27's meaning and scope is both extremely important and frequently recurring. The four courts of appeals to address Section 27—the Second, Third, Fifth, and Ninth Circuits—are the most common fora for securities actions. The circuit conflict thus encourages forum-shopping by plaintiffs, who may bring their actions for enforcement of federal rules and regulations in state court by dressing up putative Exchange Act violations in the language of state law. Short selling is also a very common market practice that is the subject of increasing litigation. The division in the lower courts means that parties will continue to engage in protracted jurisdictional

litigation, with the avoidable expense that entails for litigants and the judiciary alike.

C. Although the proper interpretation of Section 27 is the subject of much litigation, those cases rarely reach this Court. In federal circuits (like the Second and Third) that do not interpret Section 27 as an independent grant of federal jurisdiction, orders granting remand in those cases are generally unreviewable by statute. In federal circuits (like the Fifth and Ninth) that do interpret Section 27 as an independent grant of federal jurisdiction, orders denying remand are generally unreviewable because of their interlocutory nature. This is the unusual case in which the district court denied remand but certified the jurisdictional issue for interlocutory review because the Third Circuit had yet to weigh in on the circuit conflict. There is no reason to expect that confluence of circumstances to recur anytime soon. Nor is there any reason to await further percolation in the lower courts. The conflict is longstanding, the issue is one of federal statutory interpretation, and the differing views have been briefed by the parties here and aired by the courts of appeals in this and other cases.

II. A. The decision below is inconsistent with Section 27's plain text, which provides that federal courts shall have "exclusive jurisdiction" over "violations" of the Act and over "*all* suits * * * brought to enforce *any* liability or duty created by [the Act] or the rules and regulations thereunder." 15 U.S.C. 78aa(a) (emphasis added). Congress could hardly have been clearer or used broader language. Suits that assert the violation of a federally imposed duty must be brought in federal court, even if plaintiffs nominally cloak their claims in state-law garb. Here, "[t]here is no question that [respondents] assert in their Amend-

ed Complaint, both expressly and by implication, that [petitioners] repeatedly violated federal law." Pet. App. 9a. Because plaintiffs have elected to premise their state-law claims on violations of the Exchange Act and its implementing regulations, there is federal jurisdiction over this case under Section 27.

B. The decision below is also inconsistent with the purpose of Section 27, which is "to achieve greater uniformity of construction and more effective and expert application of" the Exchange Act. *Matsushita Elec. Indus. Co., Ltd.* v. *Epstein*, 516 U.S. 367, 383 (1996). The decision below undercuts that purpose by permitting plaintiffs to plead around Section 27 in state court, meaning that state court judges will be called upon to interpret and enforce the Exchange Act. Market participants in turn will be forced to contend with interpretations of the Act issued by numerous state courts under a patchwork of many States' laws. All of that will undermine consistency in the rules governing trade settlement and clearing for securities transactions on the national exchanges. In light of the effects on financial markets, the need for uniform enforcement of Section 27, and the conflict among the lower courts on an important and recurring issue of federal statutory interpretation, this Court's review is warranted.

ARGUMENT

The decision below deepens a divide among the courts of appeals over the interpretation of Section 27 of the Exchange Act. That question is important and recurring, yet likely to evade this Court's review in future cases. The Court should therefore grant review in this case; provide clarity to litigants and lower courts; and reverse the decision below, which is at

odds with both Section 27's text and its aim of uniformity in the application of the Exchange Act.

I. THE QUESTION PRESENTED WARRANTS THIS COURT'S REVIEW IN THIS CASE.

A. The Courts Of Appeals Are Divided Over The Proper Interpretation Of Section 27 And Similar Exclusive-Jurisdiction Provisions.

1. As the petition explains (at 13-19), there is a conflict among the circuits over whether Section 27 confers federal jurisdiction for claims predicated on violations of the Exchange Act or its implementing regulations. The Fifth and Ninth Circuits have held that Section 27 is an independent grant of federal jurisdiction, and therefore may expand federal jurisdiction beyond that afforded by the general federal-question statute, 28 U.S.C. 1331. See, *e.g.*, *Hawkins* v. *Nat'l Ass'n of Sec. Dealers, Inc.*, 149 F.3d 330, 331-332 (5th Cir. 1998); *Sparta Surgical Corp.* v. *Nat'l Ass'n of Sec. Dealers, Inc.*, 159 F.3d 1209, 1212-1213 (9th Cir. 1998); *Sacks* v. *Dietrich*, 663 F.3d 1065, 1068-1069 (9th Cir. 2011).

In the decision below, the Third Circuit held to the contrary that Section 27 does not confer on federal courts any form of original jurisdiction over claims predicated on Exchange Act violations. See Pet. App. 22a (Section 27 "is coextensive" with Section 1331, "merely serves to divest state courts of jurisdiction," and "does not provide an independent basis to exercise jurisdiction."). The Third Circuit acknowledged that its decision is at odds with those of the Fifth and Ninth Circuits, but the court elected to side instead with the Second Circuit's decision in *Barbara* v. *N.Y. Stock Exch.*, 99 F.3d 49 (1996), which held that Section 27 reaches only suits that are expressly brought

under the Exchange Act (and thus that arise under federal law for purposes of Section 1331), see *id.* at 55. See Pet. App. 22a.[2]

2. As the petition also explains (at 17-19), the resolution of the question presented will affect two other federal statutory regimes. Both the Natural Gas Act, 15 U.S.C. 717u, and the Federal Power Act, 16 U.S.C. 825p, contain exclusive-jurisdiction provisions that are nearly identical to Section 27. The Sixth Circuit has held that the former does not provide an independent basis for federal jurisdiction, see *Columbia Gas Transmission, LLC* v. *Singh*, 707 F.3d 583, 591 (2013), whereas the Ninth Circuit has held that the latter does provide such a basis, see *Cal. ex rel. Lockyer* v. *Dynegy*, 375 F.3d 831, 843 (2004). The question presented thus has significant "ramifications beyond the instant case." *Bartlett* v. *Stephenson*, 535 U.S. 1301, 1304 (2002).

B. The Question Of Section 27's Scope Is Important And Recurring.

1. The Circuit Conflict Encourages Forum-Shopping.

The divide among the Second and Third Circuits on the one hand, and the Fifth and Ninth Circuits on the other, is particularly important because those four

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[2] In recent years, the Second Circuit has avoided revisiting *Barbara* by construing federal-question jurisdiction broadly under Section 1331. See *NASDAQ OMX Group, Inc.* v. *UBS Sec., LLC*, 770 F.3d 1010, 1030 (2d Cir. 2014); *D'Alessio* v. *N.Y. Stock Exch., Inc.*, 258 F.3d 93, 101-102 (2d Cir. 2001). *Barbara* remains the law in the Second Circuit, however, and the Third Circuit did not construe Section 1331 broadly in the decision below. As a result, there is a square conflict over the question presented.

courts are the most common fora for securities actions. *Cf.* Cornerstone Research, *Securities Class Action Filings: 2014 Year in Review* 25 (2015) (noting that last year 126 of 170, or roughly three-quarters of, securities class actions were filed in the Second, Third, Fifth, and Ninth Circuits). The circuit conflict both enables and encourages forum-shopping by plaintiffs, who will bring their actions for enforcement of *federal* rules and regulations in *state* court by dressing up federal violations in the language of state law. Plaintiffs thus may invoke federal substantive standards while simultaneously staving off federal jurisdiction. That result is precisely what an *exclusive*-jurisdiction provision like Section 27 is meant to avoid. See, *e.g.*, *Heller, Ehrman, White & MacAuliffe* v. *Babbitt*, 992 F.2d 360, 363 (D.C. Cir. 1993) (Plaintiffs "may not, by creatively framing their complaint, circumvent a congressional grant of exclusive jurisdiction.").

2. Short Selling Is A Common Market Practice That Is The Subject Of Increasing Litigation.

Respondents' complaint asserts that petitioners violated Regulation SHO, 17 C.F.R. 242.200 *et seq.*, the regulation promulgated by the Securities and Exchange Commission to govern short sales of equity securities. See Pet. App. 8a; see also Short Sales, SEC Release No. 34-50103, 69 Fed. Reg. 48,008 (Aug. 6, 2004). The question of whether a suit like this one belongs in federal or state court arises with increasing frequency, both because of the important role that short selling plays in securities markets and because of the rising number of lawsuits that allege unlawful naked short selling. See Christopher L. Culp & J.B.

Heaton, *The Economics of Naked Short Selling*, Regulation 47 (Spring 2008) ("Naked short selling has been the focus of an increasing number of lawsuits.").

Short selling involves "a sale of a security that the seller does not own or that is consummated by the delivery of a security borrowed by or on behalf of the seller." "Naked" Short Selling Antifraud Rule, SEC Release No. 34-58774, 73 Fed. Reg. 61,666, 61,667 (Oct. 17, 2008). So-called "naked" short selling occurs when "the seller does not borrow or arrange to borrow the securities in time to make delivery to the buyer within the standard three-day settlement period." U.S. Securities and Exchange Commission, Division of Market Regulation, *Key Points About Regulation SHO* (Apr. 8, 2015). To address concerns associated with abusive naked short selling, the Commission promulgated Regulation SHO, which places certain restrictions on naked short selling. See Christopher M. Salter & Christopher F. Chase, *Short Selling and Naked Shorts in the Regulation SHO Environment*, Rev. Sec. & Commodities Reg. 2-3 (Nov. 21, 2007).

Those restrictions affect a wide variety of market participants, including those that engage in short selling as well as their brokers. See, *e.g.*, U.K. Financial Services Authority, *Discussion Paper no. 09/1—Short Selling* 7-8 (2009) (observing that short selling is a trading strategy frequently used by market makers and investment banks, as well as "traditional fund managers such as pension funds and insurance companies"). Indeed, for some market participants, short selling constitutes a significant portion or even the entirety of their trading strategy. See *Key Points About Regulation SHO* (explaining that many firms employ a short selling strategy). That market segment is critical because, as the SEC has observed,

short selling provides "important benefits" to the market, including "market liquidity and pricing efficiency." Short Sales, SEC Release No. 34-48709, 68 Fed. Reg. 62,972, 62,974 (Nov. 6, 2003); see International Organization of Securities Commissions, *Regulation of Short Selling—Consultation Report* 5 (2009).

In light of the role that short selling plays in the market, it is hardly surprising that short sellers, clearing brokers, and courts have seen an uptick in suits alleging violations of Regulation SHO. Nor is it surprising that, because several courts of appeals have construed Section 27 differently, there will continue to be litigation in other circuits over where to litigate, expending the resources of parties and the judiciary alike. See *Bowen* v. *Massachusetts*, 487 U.S. 879, 930 (1988) (Scalia, J., dissenting) ("Nothing is more wasteful than litigation about where to litigate."). This Court should take this opportunity to put an end to that jurisdictional wrangling, provide clarity to a substantial segment of the securities markets, and resolve whether Section 27 confers original federal jurisdiction over claims predicated on violations of the Exchange Act or regulations promulgated thereunder (such as Regulation SHO).

C. The Question Often Evades This Court's Review.

When plaintiffs allege violations of the Exchange Act or its implementing regulations as the predicates for state-law liability, most of those cases never reach this Court. In federal circuits (like the Second and Third) that do not interpret Section 27 as an independent grant of federal jurisdiction, orders granting remand in those cases are generally unreviewable by

statute. See 28 U.S.C. 1447(d). In federal circuits (like the Fifth and Ninth) that do interpret Section 27 as an independent grant of federal jurisdiction, orders denying remand are generally unreviewable because of their interlocutory posture. See, *e.g.*, *Melancon* v. *Texaco, Inc.*, 659 F.2d 551, 552-553 (5th Cir. 1981) ("[A]n order denying remand of a case removed to federal court is not a final order * * * [and] cannot be appealed unless certified by the district court in accordance with 28 U.S.C. § 1292(b)."); *Bishop ex rel. Bishop* v. *Bechtel Power Corp.*, 905 F.2d 1272, 1275 (9th Cir. 1990) (noting the "interlocutory nature of orders denying remand").

This is the unusual case in which (i) the district court denied the motion to remand but (ii) certified the jurisdictional issue for interlocutory review under 28 U.S.C. 1292(b) because (iii) the Third Circuit had yet to weigh in on the circuit split. That confluence of circumstances is not apt to recur anytime soon. As explained above, the vast bulk of securities cases are filed in the four circuits (the Second, Third, Fifth, and Ninth) that already have addressed the question. And even in other circuits, interlocutory appeals are rare. See, *e.g.*, *In re San Juan Dupont Plaza Hotel Fire Litig.*, 859 F.2d 1007, 1010 n.1 (1st Cir. 1988) (observing that "only rare cases will qualify" for interlocutory appeal under Section 1292(b)). There is thus no reason to await further and likely futile percolation in the lower courts. The Court's review is warranted now: the conflict is longstanding, the issue is one of federal statutory interpretation, and the differing views have been fully briefed by the parties here and aired by the courts of appeals in this and other cases.

II. THE THIRD CIRCUIT'S INTERPRETATION IS INCONSISTENT WITH THE TEXT AND PURPOSE OF SECTION 27.

A. The Decision Below Is At Odds With Section 27's Plain Text.

1. Respondents' complaint repeatedly and expressly references federal law, in addition to incorporating standards of conduct located exclusively in federal regulations. See, *e.g.*, Pet. App. 44a, 49a, 51a, 52a-54a, 55a, 59a. As both the court of appeals and the district court therefore recognized, "[t]here is no question that [respondents] assert in their Amended Complaint, both expressly and by implication, that [petitioners] repeatedly violated federal law." *Id.* at 9a; see *id.* at 29a ("Notably, [respondents] do not dispute that the alleged unlawful conduct is predicated on a violation of Regulation SHO, 17 C.F.R. § 242.204.").

Respondents' own allegations should end the jurisdictional analysis. Section 27 of the Exchange Act vests federal courts with "exclusive jurisdiction of (1) violations of [the Act] or the rules and regulations thereunder, and of (2) all suits . . . brought to enforce any liability or duty created by [the Act] or the rules and regulations thereunder." 15 U.S.C. 78aa(a) (numbering added). The present suit is brought to "enforce" a "duty" created by a regulation promulgated under the Exchange Act (Regulation SHO), even if the mechanism for enforcing that duty is a state-law cause of action that incorporates the federal standard. The court of appeals effectively read Section 27's second clause to apply only to suits that arise under the Exchange Act for purposes of federal-question jurisdiction pursuant to 28 U.S.C. 1331. But the language

of Section 27 is much broader: it extends to "all suits" intended to enforce federal duties created by the Exchange Act or its implementing regulations, regardless of whether those suits are pleaded under federal or state law.

Even if this Court were inclined to read Section 27's second clause narrowly, that still would not justify the court of appeals' ruling. Congress also provided jurisdiction over all "*violations*" of the Act and its implementing regulations. 15 U.S.C. 78aa(a) (emphasis added). That language is not limited to criminal violations. Indeed, with respect to venue, Section 27 uses the term "violation" to refer not only to criminal proceedings, but also to civil actions for injunctive relief. See *id.* (providing for venue in "[a]ny suit or action * * * to enjoin any violation" of the Exchange Act or its implementing regulations). By its terms, the first clause of Section 27—the violations clause—extends to suits that, although not pleaded under the Exchange Act, are predicated on alleged violations of the Act.

2. The court of appeals did not address the text of Section 27, holding instead that its ruling was controlled by this Court's decision in *Pan American Petroleum Corp.* v. *Superior Court of Delaware*, 366 U.S. 656 (1961) (*Pan American*). See Pet. App. 19a-20a. But *Pan American* was fundamentally a contract case. There, a pipeline company paid more for natural gas than its contracts required because of a pending state regulatory order. The company notified its suppliers that it had challenged the order and that it expected repayment in the event the order was lifted—a condition to which the suppliers did not object. See 366 U.S. at 658-659. When this Court set aside the order, the pipeline company brought suit on

its contracts in state court, but the suppliers claimed that the case had to be heard in federal court in part because of the exclusive-jurisdiction provision in the Natural Gas Act (NGA). See *id.* at 660.

This Court disagreed for the obvious reason that although the plaintiff in *Pan American* could have pursued a federal filed-rate claim under the NGA, it had elected to pursue solely a contract claim, to which federal issues could arise only by way of a defense. See 366 U.S. at 663. In a very real sense, the plaintiff in *Pan American* was not invoking federal law, either formally or functionally. Here, by contrast, respondents do not have an independent, freestanding state-law claim. Only by invoking federal standards of conduct (namely, Regulation SHO) do they manage to assert a claim at all. Indeed, their complaint repeatedly borrows the language of, and directly refers to, Regulation SHO. As masters of their own complaint, respondents have elected to allege violations of the Exchange Act and Regulation SHO, and that conscious choice brings them squarely within the ambit of Section 27.

To be sure, the Court in *Pan American* recited the truism that exclusive jurisdiction is "'exclusive' only for suits that may be brought in the federal courts. Exclusiveness is a consequence of having jurisdiction, not the generator of jurisdiction." 366 U.S. at 664. But no one here contends that the term "exclusive" in Section 27 is what generates jurisdiction. What creates federal jurisdiction is the language that *follows* the term "exclusive," *i.e.*, the language defining the scope of federal jurisdiction over all violations of, and all suits brought to enforce, the Act and its implementing regulations. Moreover, although *Pan American* states in passing in a footnote that the NGA's ex-

clusive-jurisdiction provision is limited to cases "arising under" the NGA, *id.* at 665 n.2, the Court based that dictum not on the provision's text, but on its legislative history.[3] That does not warrant ignoring the plain text of Section 27 in this context.

B. The Decision Below Is At Odds With Section 27's Purpose Of Achieving Uniformity In The Application Of The Exchange Act.

1. The purpose of Section 27 is "to achieve greater uniformity of construction and more effective and expert application of" the Exchange Act and its implementing regulations. *Matsushita Elec. Indus. Co., Ltd.* v. *Epstein*, 516 U.S. 367, 383 (1996) (*Matsushita*). The decision below unquestionably undermines that purpose. It allows plaintiffs to plead around Section 27 in state court, thus posing the very real "danger that state court judges who are not fully expert in federal securities law will say definitively what the Exchange Act means and enforce legal liabilities and duties thereunder." *Ibid.*; see Barry Friedman, *Under the Law of Federal Jurisdiction: Allocating Cases Between Federal and State Courts*, 104 Colum. L. Rev. 1211, 1241 (2004) (noting that state court adjudication of federal law tends to create disuniformity).

Indeed, the very point of Section 27's grant of exclusive federal jurisdiction is to ensure that "binding legal determinations of rights and liabilities under the

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[3] The NGA's legislative history specified that the exclusive-jurisdiction provision there governs "cases arising under the act." S. Rep. No. 1162, 75th Cong., 1st Sess. 7 (1937); *see* H. Rep. No. 709, 75th Cong., 1st Sess. 9 (1937) (same). There is no analogous legislative history for Section 27. See *Matsushita*, 516 U.S. at 383.

Exchange Act are for *federal courts only*." *Matsushita*, 516 U.S. at 384 (emphasis added). By creating exclusive federal jurisdiction, Congress furthered its interest in a "nationally uniform interpretation." *Reed* v. *Farley*, 512 U.S. 339, 348-349 (1994); see *Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U.S. 473, 483-484 (1981) (observing that "desirability of uniform interpretation" is an interest advanced by a grant of exclusive federal jurisdiction); see also *Grable & Sons Metal Prods., Inc.* v. *Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005) (acknowledging "the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues").

2. Uniformity in the interpretation of Section 27 is particularly important because of the need for predictability in the financial markets. See *Pinter* v. *Dahl*, 486 U.S. 622, 652 (1988) (noting that the securities laws are "an area that demands certainty and predictability"). As matters currently stand, market participants face uncertainty not only with respect to *where* they may be compelled to defend against securities claims, but also with respect to *what* their duties and responsibilities will be under the federal securities laws. The practical reality is that market participants may be forced to comply with interpretations of the Exchange Act issued by numerous state courts under a patchwork of many States' laws—making it more difficult to ascertain what conduct does and does not run afoul of federal securities laws. That defeats Section 27's purpose of achieving consistency in the rules governing trade settlement and clearing for securities transactions on the national exchanges.

The "ripple effects" of uncertainty are magnified here because short sales are very common transactions in which many market participants engage. See

Cent. Bank of Denver, N.A. v. *First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 189 (1994). The decision below thus stands to have a significant effect on financial markets. As claims concerning Regulation SHO are litigated in state courts, there will be a corresponding increase in "legal uncertainty for firms about whether activity that is lawful under the federal regulatory scheme may nevertheless be questioned in state court," which in turn "may cause firms to impose restrictions on customer short sale activity and limit proprietary short sale activity," thereby "reduc[ing] liquidity" and "harm[ing] the markets by making price discovery less efficient." Salter & Chase, *supra*, at 7. In light of those consequences, the "need for uniform enforcement" of Section 27, and the "conflict among the lower courts on [an] important and recurring issue," this Court's review is warranted. *California* v. *Am. Stores Co.*, 492 U.S. 1301, 1306 (1989).

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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